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SUMMARY RECORD OF THE 4th PLENARY MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Tuesday, 16 June 1998, at 3 p.m.

President: Mr. CONSO (Italy)

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1)

1. **Mr. MINOVES TRIQUELL** (Andorra) said that, as a country with a 720-year-old record of peace and a long tradition of democracy, freedom and respect for human rights, one which for centuries had served as a safe haven for refugees fleeing the ravages of war, Andorra was, as a matter of principle, fully committed to participation in the establishment of an international criminal court.

2. In order to ensure the establishment of a Court with a strong Statute, a balance must be struck between the jurisdiction of the Court and that of the State. The Court must be empowered to take action, on a complementary basis, when national criminal justice systems failed to function effectively. The Prosecutor consequently played a crucial role and should be in a position to initiate investigations, subject to legitimate safeguards. The Court's jurisdiction must apply to all States which accepted its Statute. Regarding the definition of crimes coming within the Court's jurisdiction, Andorra was deeply concerned about acts which affected children and young people in particular. The question of certain crimes whose repercussions were the subject of current debate in many societies should be approached in good faith. Defining the relationship between the United Nations and the Court was important in strengthening and legitimizing the work of the Court. The respective competence of the Court and the Security Council must be carefully appraised so as to reconcile the former's independence with the latter's prerogatives. Andorra reaffirmed its opposition to the death penalty. On a different matter, it would seek to ensure balanced linguistic access to the work of the Court.

3. That morning, within the context of the Conference, Andorra had joined the group of what had been termed "like-minded States" whose general views in favour of an effective and strong court it shared. It hoped that the establishment of the International Criminal Court would serve to contain and eradicate the bloody conflicts which debased mankind and caused much unnecessary suffering.

4. **Mr. YEE** (Singapore) stressed the importance of creating a court which dispensed justice in accordance with the highest legal standards and would therefore have the credibility and moral authority essential to its effective functioning. Particular care must be taken to ensure that, while those who perpetrated crimes of grave concern to the international community were brought to justice, fundamental norms of due process, such as respect for the rights of the accused and the establishment of guilt according to strict evidential standards, were upheld. The principle of *nullum crimen sine lege* must apply in defining precisely what conduct entailed criminal responsibility, so that individuals could be fully aware of the consequences of their actions. Whereas the Court must be endowed with the flexibility to contribute to the progressive development of legal principles, that must be distinguished from the power to create offences.

5. Realism dictated that the aim should not be to establish a court of human rights of the kind that existed in Europe or the Americas, for other regions were still a long way from establishing such institutions, but, rather, to give tangible recognition to the fact that some acts were so universally abhorred that their perpetrators should not escape punishment, either by national criminal justice systems or, when they were non-existent or failed to act, by an international judicial body.

6. Since the Court would not have its own enforcement agencies and its effectiveness would depend upon the cooperation of States parties, universal participation should be sought, but at the same time account must be taken of the diversity of regional interests, different stages of development and social and cultural traditions, and the positions of the major powers, in order to achieve a broad consensus and build an effective, working institution.

7. Mr. BAJA (Philippines) said that his country aspired to the establishment of an international criminal court that would dispense justice efficiently and effectively; an institution that was ineffective in addressing the problem of impunity of the perpetrators of the most heinous violations of the laws of humanity would not serve justice nor help maintain international peace and security. The Philippines' position, consistent with its constitutional and legal traditions, was based on those considerations and on its desire to uphold the current evolution of international law.

8. National judicial systems should have primacy in trying crimes and punishing the guilty. The Court should complement those systems and seek action only when national institutions did not exist, could not function or were otherwise unavailable. The Court should have jurisdiction over the core crimes of genocide, war crimes, crimes against humanity and aggression, but its Statute should contain an additional provision allowing for the future inclusion of other crimes that affect the very fabric of the international system.

9. The Prosecutor should be independent and be entitled to investigate complaints *proprio motu*, subject to the safeguards provided by a supervisory Pre-Trial Chamber. The use of weapons of mass destruction, including nuclear weapons, must be considered a war crime. The definition of war crimes and crimes against humanity should include special consideration of the interests of minors and of gender sensitivity. The Statute should provide for an age below which there was exemption from criminal responsibility, and persons under 18 years of age should not be recruited into the armed forces. The sexual abuse of women committed as an act of war or in a way that constituted a crime against humanity should be deemed particularly reprehensible. The crime of rape should be gender-neutral and classified as a crime against persons. A schedule of penalties should be prescribed for each core crime defined in the Statute, following the principle that there was no crime if there was no penalty, which would also meet the due process requirement that the accused should be fully apprised of the charges against them and of the penalties attaching to the alleged crimes.

10. The Philippines supported the positions set out by the States members of the Movement of Non-Aligned Countries at the recent ministerial meeting in Cartagena, and was prepared to make the necessary changes to its national laws required by the establishment of the Court.

11. Mr. MILO (Albania) said that public opinion was increasingly concerned about the failure of the international community to prevent the continuing serious violations of international humanitarian law and punish those who committed them and the political leaders who were directly responsible for them. The perpetrators of the Serbian massacres in Bosnia were still unpunished, and the same crimes were being repeated in Kosovo, where the genocidal massacres by the Serbian authorities were a consequence of an institutionalized policy of genocide and State terrorism carried out through the military, paramilitary and police machinery against Albanians. The Albanian people of Kosovo were prey to a policy of ethnic cleansing, and their resistance to that policy in self-defence could never be identified with terrorism. The international community's slow or inadequate response to such crimes tended to cast doubt on the effectiveness of international institutions. Security Council recommendations had not only failed to prevent the violence and terror in Kosovo but had even won time for the Serbian authorities to launch large-scale ethnic cleansing operations.

12. For those reasons, Albania strongly advocated investing the International Criminal Court with universal jurisdiction over such crimes as genocide and ethnic cleansing, war crimes, whether international or domestic,

aggression and other crimes against humanity. In an era of globalization, a growing range of crimes could be regarded as crimes against humanity and against international peace and security, including institutionalized State terrorism and certain global aspects of organized crime.

13. Albania was in favour of compiling a list of crimes subject to the jurisdiction of the International Criminal Court, in order to discourage all criminal abuses of human rights, create the conviction that such crimes could not go unpunished and support efforts to maintain international peace, security and stability. The Court should be fair, active and effective and should be able to safeguard and re-establish justice, rehabilitate victims of such crimes and assist in the establishment of normality.

14. The Court must have integrity, autonomy and independent jurisdiction, on the basis of existing international guarantees and means of coercion such as those provided for by the Charter of the United Nations and also other complementary guarantees, particularly in cases where the principle of complementarity with national law and judicial systems was inapplicable. The efficiency of the Court would depend largely on the political will and cooperation of States and, first and foremost, on the constructive cooperation of the permanent members of the Security Council and their agreement to involve the Court in their efforts to maintain peace and security. They should guarantee the Court's jurisdiction in judging crimes against humanity and their perpetrators, while also ensuring follow-up to the Court's recommendations on post-crisis situations.

15. **Mr. BAUDIN** (Senegal) said that the creation of supranational jurisdiction over the crimes of genocide, grave and repeated gross violations of human rights, war crimes and crimes against humanity was the tangible expression of a universal awareness that such crimes should no longer go unpunished. That would open the way to safeguarding the rights of the human person. The Conference, overcoming selfish national interests while taking account of the diversity of judicial systems, should lead to the establishment of an effective, permanent court, independent of any political structures.

16. Senegal subscribed to a number of principles embodied in the Dakar Declaration adopted by a majority of African States. The Court should be permanent and universal in character and should embody the fundamental principles of international criminal law. It should be complementary to national courts and be independent of any political structure, including the Security Council and States. It should be effective, just and impartial. The Court should have an independent prosecutor, who should be able to initiate proceedings ex officio and without hindrance, subject to the existence of a Pre-Trial Chamber to guarantee the legality of the prosecution proceedings. The Court's jurisdiction should extend, as a minimum, to genocide, war crimes and crimes against humanity. It should furthermore ensure respect for the rights of the defence and safeguard the interests of victims. Acceptance of reservations to the Statute would undermine the effectiveness of the Court.

17. The values of justice and peace lay at the heart of the initiative to establish an international criminal court—peace as the key to stability and the consolidation of democracy and the rule of law, and justice as a deterrent against acts of revenge committed when crimes were seen to go unpunished. By adopting the Statute of a permanent, independent, effective, transparent and non-selective international criminal court, the Conference would be leaving an enduring legacy to future generations.

18. **Mr. AL BUNNY** (Syrian Arab Republic) said that the peoples of the world were looking with trust and optimism to the establishment of an independent international criminal court—the forerunners of which had been ad hoc tribunals. The Court to be set up should dispense justice, protect rights and equality and spare none of the criminals who had flouted the most basic human values and violated international law. It must be an international judicial body with locally circumscribed competence and an expression of the international will represented in the

General Assembly, with a clearly defined relationship to the United Nations, but with independence from the Security Council. The Court's jurisdiction should cover the crime of genocide, crimes against humanity and war crimes committed in international conflicts, in accordance with the 1949 Geneva Conventions and the 1977 Protocols. The Court should be able to prosecute the perpetrators of aggression, as a crime against peace, but subject only to the definition of the crime of aggression contained in General Assembly resolution 3314 (XXIX) of 1974. To include crimes for which there was as yet no accepted definition would be contrary to the overriding principle of *nullum crimen sine lege*.

19. Furthermore, the inclusion of other crimes which came within the jurisdiction of national courts would confuse matters of greater importance with those of lesser importance and also raised the question of complementarity. In order to preserve national sovereignty, the Court should have complementary jurisdiction only when national courts were unable to act. The action taken by the Prosecutor in initiating proceedings must be subject to a special mechanism that would guarantee the legality of proceedings. Transparency, integrity and credibility were crucial attributes of the Court, which must furthermore have full financial independence. It should not be financed from the United Nations budget, but by the States parties to the Convention, in accordance with specific criteria.

20. **Mr. SCHMIDT-JORTZIG** (Germany) said that the Conference offered a real opportunity for the world community to take a major step forward. A strong, independent and effective international court, without loopholes in its Statute, was needed to ensure that the worst crimes against humanity could no longer go unpunished. In that context, Germany fully supported the statement made by the United Kingdom as holder of the Presidency of the European Union. Germany was committed to the creation of a court with automatic universal jurisdiction over core crimes, including war crimes in internal conflicts. The principle of complementarity should be observed, and the Court should have a strong and independent Prosecutor. Furthermore, all States parties should cooperate without reservation. His delegation proposed that the crime of aggression should be included in the list of core crimes, having due regard for the role conferred on the Security Council by the United Nations Charter. In accordance with historical precedent, the definition of that crime should focus on indisputable cases of aggression.

21. Two of Germany's main concerns were automatic jurisdiction over core crimes and the independence of the Prosecutor. In an interdependent, globalized world, States must accept the Court's jurisdiction over the core crimes; sovereignty would be better served by cooperation than by futile attempts to stand alone. The system of complementarity incorporated in the draft would not entail the loss of sovereignty but would help stop the gaps which had enabled the worst criminals to escape punishment. Germany was committed to the concept of universal jurisdiction over the core crimes in order to promote the rule of law in international relations. No compromise that made it possible for a State to choose where to accept the rule of law and where to disregard it would be acceptable.

22. It should not be left to States alone to decide whether a matter might be investigated. Although provision should be made for proper judicial control in the investigative stages, the Prosecutor should be entitled to initiate investigations without having to wait for a complaint by a State.

23. **Mr. ZALAMEA** (Colombia) said that it was significant that the Rome Conference was being convened at a time when the world was celebrating the anniversaries of the adoption of major international and regional human rights instruments. The Conference's remit, to adopt the Statute of a permanent international criminal court, would make good one of the major institutional omissions in the international legal order. The draft Statute provided an appropriate legal basis for an effective, independent and impartial court.

24. The jurisdiction of the Court should cover the most serious international crimes, recognized as such in international law. The Statute must set out clear and precise rules as to the conditions in which the mechanism for international investigation and prosecution would be set in motion. Such jurisdiction should be complementary to, and not a substitute for, national criminal justice systems.

25. In respect of article 108 of the revised draft Statute on the settlement of disputes, Colombia proposed that the International Court of Justice at The Hague should be entrusted with the settlement of disputes relating to the interpretation or application of the Statute. However, disputes relating to the competence of the Court should be settled by the Court itself.

26. The Conference had a historic responsibility and faced a considerable challenge in meeting the legitimate desire for justice of peoples who had suffered from horrendous crimes such as genocide, war crimes or crimes against humanity.

27. **Mr. DE MATOS FERNANDES** (Portugal), endorsing the views expressed by the United Kingdom on behalf of the European Union, said that the establishment of an international criminal court was a necessary guarantee of respect for fundamental human rights. It would show that the lessons of history had been learned and, as the world entered a new century in an era of globalization, would constitute tangible recognition of the need for effective means to bring to justice those responsible for the most serious crimes under international law. The jurisdiction of the Court should cover the core crimes of genocide, war crimes and crimes against peace and humanity. It was not a matter of transferring jurisdiction from national courts, but of enabling the Court to intervene wherever national judicial systems were non-existent or unable or unwilling to take action. The Court alone should decide on the verification of such situations.

28. The crimes defined should include sexual abuse, particularly of women, and the use of children as soldiers. Portugal remained flexible with respect to extending the list of violations covered by the Court's jurisdiction according to established review mechanisms and experience gained, to include other crimes which seriously undermined the fundamental values of humankind. It was in favour of including the crime of aggression, provided that it was clearly defined. The Court's jurisdiction should not, however, be extended unduly, at the risk of detracting from its effectiveness, prestige and authority. The recent practice of establishing ad hoc tribunals should not be continued. The Statute should enhance the position of its judges by ensuring their total independence and protecting them against all forms of pressure.

29. The Prosecutor should be independent of any organ or entity, should be subject to safeguards of objectivity and legality and should have the power to initiate investigations ex officio. It would not be conceivable for national courts to have wider jurisdiction than that of the International Criminal Court. Indeed, as interdependence among nations had grown, the concept of sovereignty had evolved significantly. Portugal strongly supported the establishment of a permanent, just and credible court. There should be no provision for the death penalty, and attention should be paid to the position of victims, and to the admissibility of compensation. The success of the Court's action would depend on the broadest and most expeditious cooperation possible between the States parties and the Court.

30. A unique opportunity was at hand to provide the international community with the legal means to bring to justice and punish those who practised extermination in the most serious conflicts, including those waged within States. Practical expression must be given to the principle that no one was above the law by creating an instrument which recognized equality among all persons.

31. **Mr. KAFANDO** (Burkina Faso) said that the Conference, and the Statute it would be adopting, were of paramount importance in punishing barbarities, such as the genocide in Rwanda and the former Yugoslavia. The limitations of the ad hoc tribunals set up in connection with those tragedies had demonstrated the need for a permanent international court, which would also serve as a deterrent to potential criminals.

32. The convening of the Conference was the culmination of a long process of codification of legal rules for safeguarding peace and security and the protection of human rights; non-governmental organizations (NGOs), particularly humanitarian bodies, had played a catalytic role in the process. Burkina Faso was determined to join others in overcoming outstanding difficulties and ensuring universal accession to the Statute. The establishment of an international criminal court was now a matter of urgency and a duty towards present and future generations.

33. Burkina Faso had proved its commitment to basic human rights through its own institutions and through its steadfast efforts—currently as Chairman of the Organization of African Unity (OAU)—to seek solutions to the crises affecting the African continent, some of which had given rise to the crimes to be covered by the jurisdiction of the Court.

34. Considerations of particular concern to Burkina Faso were the principle of complementarity with national courts, the Prosecutor's initiative in triggering proceedings, the independence of the Court from any political body, particularly the Security Council, and the Court's competence for the definition of war crimes. The Court should be financed in accordance with the scale of assessments system in force at the United Nations.

35. **Mr. TATSII** (Ukraine), stressing the importance of establishing an international criminal court to further strengthen and develop international law and establish the principle of the punishment of the most serious crimes, said that the draft Statute provided a sound basis for consensus.

36. Ukraine attached particular importance to the principle whereby the Court would be called upon to intervene in cases where national judicial procedures were unavailable or ineffective, but would not be a substitute for national courts. Ukraine agreed that the Court must have jurisdiction over the most serious international crimes against peace and humanity. Ukraine, a once-powerful nuclear State, had voluntarily surrendered its nuclear potential and therefore strongly supported the idea of establishing criminal responsibility for acts related to the use of nuclear weapons. It was also in favour of including crimes against United Nations and associated personnel in the list of crimes covered by the Statute. There should be a large number of ratifications of the Statute to ensure that the Court would be effective and widely recognized. The Court must be funded by the States parties so as to ensure its independence. Ukraine agreed that the Court should be located at The Hague.

37. **Mr. ASAMOAH** (Ghana) said that the establishment of an international criminal court would be a fitting conclusion to a century in which countless human lives had been lost. There was an urgent need to seek a quick, effective and unbiased international response to crises that had the potential for genocide, crimes against humanity and other such crimes. In Rwanda, as elsewhere, many lives could have been spared if the international community had acted promptly. Ghana urged the family of nations to focus critically on the establishment of criteria for a collective response to crisis situations, but the establishment of an international court should not be regarded as an end in itself.

38. If the International Criminal Court were to be a credible judicial institution, it must be based on a number of essential principles. It must have inherent jurisdiction over the core crimes of genocide, crimes against humanity and war crimes. The requirement of State consent as a precondition for the exercise of jurisdiction would render the Court ineffective and was unacceptable. Crucial to the credibility of the Court and to its universal acceptance

were provisions guaranteeing its independence and impartiality. It must not supplant national criminal justice systems, nor act as a supervisory body over such systems, but should be able to investigate and prosecute where national systems were unable or manifestly failed to act. The Court must be sensitive to gender issues in situations of armed conflict, and relevant provisions must be incorporated into the mainstream of the Court's functions. The principles on which the Court was based should reflect the current state of international law and the reality of international society.

39. The challenge was to create a universally acceptable, fully functional and effective court with a human face, which enjoyed the confidence of both the accuser and the accused, met the demands for justice of both victims and the international community and had the capacity to facilitate peace and stability.

40. **Mr. MICHALEK** (Austria) said that Austria's position was reflected in the statement made on behalf of the European Union. More specifically, he added that the tragedies in Rwanda and the former Yugoslavia had emphasized the need for such a court, since the two ad hoc tribunals were no substitute for a permanent institution. A truly effective, independent and permanent court would play a major role in upholding the principles of justice and the rule of law. A particular advantage would be its preventive role, through its deterrent effect on potential criminals, thereby strengthening efforts to maintain peace and stability in the world.

41. The Court should have jurisdiction over the core crimes of genocide, crimes against humanity and war crimes, and also crimes of aggression, although the difficulty of finding a generally acceptable definition of the latter should not delay the establishment of the Court. Austria also supported the inclusion of crimes of sexual violence committed in armed conflict.

42. The Court should be complementary to national criminal justice systems, acting not as a substitute, but only where national systems were unable or unwilling genuinely to investigate a crime and prosecute where the facts so warranted. The establishment of the Court did not, therefore, absolve national systems of their primary responsibility to act effectively.

43. An effective, mandatory system of State cooperation was a prerequisite for an effective court; any grounds for refusal of cooperation would have to be explicitly enumerated in the Statute. Requests by the Court should in principle be given priority over requests from States, and sentences should be effectively enforced by States parties that had expressed their willingness to accept convicted persons. The procedural provisions must ensure the fair and effective operation of the Court, safeguard the rights of the accused and ease the procedure of giving evidence by victims. Consideration should be given to requiring States parties to secure proof, especially through the preparation and registration of refugee reports.

44. **Mr. SPASOV** (The Former Yugoslav Republic of Macedonia) said that an international criminal court would fill a gap in the international legal system, would give a clear signal to the perpetrators of serious crimes that they would be brought to justice, and would help guarantee universal respect for human rights and fundamental freedoms. The criminal justice system in the Republic of Macedonia had all the prerequisites for effective observance of international conventions and for the prosecution of international criminals. It had been agreed in the Preparatory Committee that the Court should be an independent, permanent institution open to all States and that it should have an international legal personality with the competence to bring persons to justice for the most serious crimes. He hoped that States would demonstrate the necessary political readiness to reach agreement on outstanding issues.

45. The establishment of the International Criminal Court would also give strong impetus for the further development of international penal law and for international cooperation in combating serious crimes, especially organized transnational crime. His Government accepted the principle that complementary jurisdiction would operate when national courts were unable or unwilling to act, and when it was obvious that a national court's decisions were partial. The Court should be independent of political influence and the influence of States or international bodies and should have jurisdiction over the four core crimes of genocide, crimes against humanity, war crimes and the crime of aggression. Subject to agreement by the Conference, the Republic of Macedonia would accept the inclusion of terrorism and illicit trafficking in narcotic drugs and psychotropic substances in the list of crimes. The Prosecutor should be independent and have the power to initiate investigations ex officio, on the basis of information from relevant sources. The Security Council should be authorized to initiate investigations before the Court, and its prior decision that an act of aggression had been committed by a State should be a condition for initiating proceedings. The death penalty should be excluded. His Government considered that the basic principles of penal proceedings contained in the draft Statute were consistent with international standards and decisions. States parties should consistently carry out their obligations under the Statute, in cooperation with the Court, and no reservations to the Statute should be allowed after its adoption.

46. The system of international criminal justice should be further elaborated, in particular by developing instruments of mutual assistance in the suppression of crimes and by unifying material and procedural law, thus eliminating obstacles to the effective implementation of international criminal justice.

47. Mr. LAHIRI (India) stressed India's constructive participation in efforts for the progressive development and codification of international criminal law. The only durable basis for the development of such international cooperation was scrupulous regard for the fundamental principles of the United Nations Charter, notably the sovereign equality of States, non-discrimination and non-interference in internal affairs. India fully endorsed the view of the Movement of Non-Aligned Countries agreed at the ministerial meeting held in New Delhi, the declaration agreed by the Non-Aligned Movement group in New York and the resolution of the Asian-African Legal Consultative Committee, which had stressed that the International Criminal Court should be based on the principles of complementarity, State sovereignty and non-intervention in the internal affairs of States, and that its Statute should be such as to attract the widest support and acceptance of States, State consent being the cornerstone of the Court's jurisdiction.

48. It was unrealistic to conceive of inherent or compulsory jurisdiction for the Court in view of the widely diverging views on the specific elements of certain crimes, the proposed inclusion of elements from multilateral instruments to which several States were not parties and the absence of consensus on the current status of customary international law with respect to several of those crimes. India accordingly favoured the approach of optional jurisdiction adopted by the International Law Commission in its draft of the Statute.

49. It was generally agreed that the Court's jurisdiction should be complementary to the primary jurisdiction of nation States, and that the Court could intervene only when a national judicial system was non-existent or unable to deal with the crimes covered by the Statute. That was in conformity with the principles of territorial jurisdiction and the sovereignty of States. It was understandable that the Court should intervene in exceptional situations, but it would be a travesty of the concept of complementarity to expect States with well-established and functioning judicial and investigative systems to have to prove constantly the viability of their judicial structures, failing which they would be overridden by the International Criminal Court.

50. The competence and authority to initiate the jurisdiction of the Court rested with States, particularly those with a direct interest in a given matter; it was inappropriate to vest an individual prosecutor with the power to initiate

investigations *proprio motu*. A clear distinction should be made between the sovereign authority of States and the professional role of a prosecutor. The approach of ad hoc tribunals could not constitute a precedent or be considered automatically applicable to a permanent international criminal court.

51. The Court must be entirely impartial and independent of political processes. Legally, the function of the Court was international criminal justice, not the maintenance of international peace and security. There was no legal basis on which the Security Council could either refer matters of peace and security to the Court or veto action by the Court. Any pre-eminent role for the Security Council in triggering the Court's jurisdiction constituted a violation of sovereign equality and of equality before the law because it assumed that the five veto-wielding States did not by definition commit the crimes covered by the Court's Statute or, if they did, that they were above the law and possessed *de jure* impunity from prosecution. The anomaly of the composition and veto power of the Security Council could not be reproduced in an international criminal court.

52. The crimes coming within the jurisdiction of the Court should be defined precisely in the Statute. The function of the Conference was to establish an institution, not to develop and codify substantive international law. Prudence and the requirement of securing universal support dictated that the Conference should not become involved in elements over which there were clearly diverging views. India strongly supported the inclusion of terrorism in the jurisdiction of the Court.

53. **Mr. DABOR** (Sierra Leone) called for a fair, effective, independent, impartial and unfettered international criminal court. The success of the Conference would lie in its ability to guarantee the Court's independence. It was imperative that the Court should have inherent jurisdiction and that the Prosecutor should be empowered to initiate investigations *proprio motu*, failing which the Court would be subordinated to a generalized veto power. The Prosecutor must be able to receive information from victims and intergovernmental and non-governmental organizations to trigger investigations and prosecutions. The Court must be sensitive to and respect the rights of victims.

54. The Court should have jurisdiction over genocide, war crimes and crimes against humanity, and also over aggression, subject to an agreed definition of the crime. The Security Council should be able to refer situations to the Court but should not be able to exercise any veto, nor unilaterally cause indeterminate delays to the Court's proceedings. Full and prompt cooperation by States was essential. Trials must be conducted in a speedy and just manner. The Court's independence must also be assured in terms of funding. The acceptance of funding by a particular State would detract from its independence, since it would have to rely on economically stronger States, which might discourage ratifications and would be disadvantageous to smaller and less developed countries. The best solution would be to finance the Court from the United Nations budget.

55. His country had for seven years been undergoing a bloody war in which barbaric acts had been committed by rebel forces; the perpetrators of such acts would not have gone unpunished if there had been an independent international criminal court. Cooperation in the finalization of the Statute, and its ratification, would testify to the common desire to overcome the failures of national legal systems and would provide an opportunity to contribute to international stability and the prevention of atrocious crimes.

56. **Mr. TJIRIANGE** (Namibia) endorsed the statement made by the representative of South Africa on behalf of the Southern African Development Community (SADC). In view of the atrocities the world had witnessed during the previous century and Namibia's own recent history, his Government supported the establishment of an effective and independent international criminal court.

57. The International Criminal Court should not be subjected to political decisions of the Security Council. It must be completely independent, to the same degree as the International Court of Justice. The Security Council might, however, refer matters to the Court in accordance with its mandate for the maintenance of international peace and security. The Court must have inherent jurisdiction over the core crimes of genocide, crimes against humanity, war crimes in international and non-international armed conflicts and aggression. A State party accepted the Court's jurisdiction over those crimes upon ratification of the Statute, and no further State consent should be required for referring a matter to the Court.

58. The independence of the Prosecutor was of great importance to the effective operation of the Court; he or she must be able to initiate investigations and institute prosecutions *proprio motu*, subject to appropriate judicial scrutiny. The effectiveness and credibility of the Court would, finally, depend on cooperation from States parties.

59. **Mr. ABDULLAH** (Afghanistan) reaffirmed his delegation's support for the establishment of an international criminal court. In the previous 20 years, his country had been a victim of aggression and the theatre of violations of humanitarian law, first by the former Soviet Union and more recently by the Taliban mercenaries with the direct participation of foreign militia and military personnel. The acts committed by the former constituted war crimes or crimes against humanity, while the latter continued to perpetrate war crimes, crimes against humanity and genocide. United Nations resolutions had gone unheeded. Those tragic events were evidence of the need for an independent, credible and impartial court which should not be hostage to a political body. Political considerations and the geostrategic and geoeconomic interests of Security Council veto-holders should not prevent the Court from condemning aggressors. The world needed to establish a historical record of major international crimes, if only to establish the truth and to educate future generations, in order to deter potential criminals and avoid the repetition of such crimes. Aggression should accordingly be among the core crimes within the inherent jurisdiction of the Court.

60. The Court should conduct its work independently of the Security Council. Any impediment to the independent exercise of justice would damage the credibility of the Court, especially in the eyes of victims. He warned against the danger of the selectivity and double standards that prevailed in the assessment of human rights in the world. The jurisdiction of the Court should be limited to the core crimes of aggression, genocide, war crimes and crimes against humanity, while leaving open the possibility of broadening the scope of its jurisdiction through periodic amendment of the Statute.

61. The Court should play a complementary role in relation to national courts, and the unavailability and inefficacy of national courts should be properly defined in order to avoid conflicts of competence and infringement of the sovereign rights of independent States.

62. Agreement among the parties to a conflict based on the "forgive and forget" principle for the purpose of national reconciliation should be respected by extra-national institutions, since there were times when even justice might not serve its own purpose. In some cases, amnesties could provide a mechanism to facilitate the restoration of the rule of law and the normalization of situations of conflict and hostility.

63. **Ms. MARISCAL DE GANTE Y MIRÓN** (Spain) said that she attached importance to several issues. She agreed that the Court should have jurisdiction over the core crimes that were abhorrent to human conscience. Being aware of the difficulties of including the crime of aggression, Spain remained open-minded to any initiatives that might emerge from the Conference, without calling in question the competence of the Security Council. It strongly supported the principle that the Court should be subsidiary or complementary to national judicial systems, and should operate as a court of last resort when a national system was unable to meet its responsibilities. The Court

must be free from any suspicion of politicization or partiality; its personnel must be highly qualified and independent. The same attributes were required of the Prosecutor. On the subject of the structure and functions of the Office of the Prosecutor, Spain was in favour of the principle of legality, but would not oppose the inclusion of certain elements of the principles of expediency and timeliness, subject to controls. It was further in favour of States cooperating as closely as possible with the Court, and that included third States, because obligations in the area of human rights formed part of *jus cogens*, which did not entail interference in internal affairs. The Statute of the Court should not depart from those new concepts in criminal law, which went beyond the traditional criminal law framework in terms of relations between the State and the criminal by including the rights of victims. Particular attention should be paid to special situations in which the victims were the most vulnerable sectors of the civilian population, such as women and minors.

64. **Mr. GÓMEZ** (Chile) said that the intended establishment of an international criminal court reflected a clear ethical attitude on the part of the international community to the impunity which had prevailed in so many cases of serious crimes. Existing judicial mechanisms, based primarily on the action of national courts, had shown their limitations, causing scepticism and distrust, particularly among victims. A truly effective international criminal court would help deter future offenders and enable the law to play its role as an instrument of peace and social order.

65. The Court should not be a substitute for national judicial systems, but should complement them. It must be independent of any external influence, political or otherwise, whether by States or by international organizations. Its independence would attest to its credibility and effectiveness. Independence should also be ensured by its funding mechanisms. Chile stressed the need for accession by the largest possible number of States to the Statute and hence for a harmonization of different positions, but not at the price of setting up a court which lacked the ways and means for performing its functions effectively.

66. The mechanisms under which the Court would exercise its jurisdiction should be sufficiently flexible. International experience of other judicial bodies had shown that unduly strict requirements of that nature seriously weakened their effectiveness. The Court should therefore have inherent jurisdiction with respect to all crimes recognized under the rules of general international law. Crimes such as genocide, war crimes, whether committed in international or internal conflicts, and crimes against humanity should fall within its jurisdiction. The list of crimes should also include crimes against women, especially those involving sexual violence, and also the serious crime of forced disappearance of persons. Not only States and the Security Council but also the Prosecutor should be empowered to initiate proceedings. Chile attached great importance to the role of the Prosecutor, and to provisions on cooperation and judicial assistance. The effectiveness of the Court would depend to a large extent on the cooperation of States. Because of its recent history, Chile attached crucial importance to the unrestricted respect for human dignity and to the need to punish effectively crimes that constituted serious violations of that dignity.

67. **Mr. HASSOUNA** (Observer for the League of Arab States) expressed support for the principle of including the crime of aggression in the list of crimes within the jurisdiction of the Court, taking into account the definition of aggression contained in General Assembly resolution 3314 (XXIX) of 1974 and the distinction between aggression and the rights of the peoples to armed struggle. The definition of war crimes should include grave violations of the Geneva Conventions of 1949, and of the additional Protocols of 1977. There being no agreed definition of the crime of terrorism, the League of Arab States would prefer not to see that crime included in the Statute, but should the Conference intend to include it, it might be guided by the definition of the crime of aggression and the crime of terrorism laid down in the 1998 Arab Convention on combating terrorism. To be free from any political influence, the Court must be independent, particularly of the Security Council, whose role should

exclude intervention in judicial work and should be confined to lodging complaints and referring them to the Prosecutor, without prejudice to any country's right to file a complaint. The Security Council should not have the right to interfere in investigations and trial proceedings. The Prosecutor should be fully independent but should not be entitled to trigger proceedings without specific judicial controls. Evidence must be based on legitimate procedures as the best guarantee for the integrity of investigation. Finally, there was no need for a specific provision concerning the settlement of disputes arising from the interpretation or application of the Statute or any reservations to it.

68. **Mr. SOMMARUGA** (Observer for the International Committee of the Red Cross—ICRC) said that, by virtue of its mandate to work for the faithful application of international humanitarian law, his organization supported moves to set up effective mechanisms for the punishment of serious crimes. Although States must continue to bear primary responsibility for instituting legal proceedings, and indeed greater efforts must be made to encourage them to meet their existing obligations and bring suspected war criminals before their own courts, the present system had shortcomings, and the impunity of war criminals could no longer be tolerated. Within the complementary roles of the International Criminal Court and national courts, the future Court should be endowed with full powers to discharge its responsibilities. No backward step should be taken in relation to existing international humanitarian law.

69. The Court must have jurisdiction over war crimes committed in all types of armed conflicts, international or otherwise. The war crimes to be listed in the Court's Statute must include the most serious violations of Additional Protocols I and II to the 1949 Geneva Conventions.

70. The Court should have inherent jurisdiction over genocide, crimes against humanity and war crimes. It should be competent to try such cases when a State became party to the Treaty establishing the Court. By virtue of the principle of universal jurisdiction, any State had the right, and in many cases the duty, to exercise its jurisdiction or extradite suspected war criminals, without have to secure the agreement of other States. To require the additional consent of States before a case could be referred to the Court would clearly be a retrograde step in respect of existing law. War criminals should not enjoy legal protection from prosecution.

71. The Prosecutor must be empowered to initiate investigations and institute proceedings *proprio motu*, while complying with the principle of complementarity. Reiterating the firm support of ICRC, the custodian of the Geneva Conventions, for the process under way, he said that the establishment of an international criminal court would also send a clear message to the perpetrators and potential perpetrators of such violations and help to promote national reconciliation in countries beset by violence.

72. **Mr. JESSEN-PETERSEN** (Office of the United Nations High Commissioner for Refugees), speaking on behalf of the High Commissioner, said that atrocities in Sierra Leone, the former Yugoslavia and the Great Lakes region highlighted the critical importance and relevance of a permanent international criminal court. The United Nations High Commissioner for Refugees (UNHCR) joined other humanitarian agencies through the Inter-Agency Standing Committee in expressing its support for the establishment of such a court, which would crucially complement the work carried out by the humanitarian agencies. Mass human rights violations were today a major cause of humanitarian crises, but the international community's efforts had focused on the consequences of such crises, though little had been done to tackle their underlying causes. Any permanent court could help prevent future atrocities and also promote reconciliation in societies emerging from conflict.

73. UNHCR believed that the Court could ensure more effective implementation of the "exclusion clause" whereby individuals who had committed certain crimes were excluded from international protection as refugees,

by providing more authoritative guidance on the interpretation of that clause and by making sure that those so "excluded" were brought to justice. The Court's Statute must also cover war crimes committed during internal conflicts. UNHCR urged that the Court's jurisdiction over war crimes should extend to armed attacks against civilians, *inter alia* in United Nations-declared "safe areas", denial of humanitarian assistance, and forced displacement with the deliberate aim of achieving ethnic homogeneity in a given geographical area.

74. The jurisdiction of the Court should also extend to attacks against humanitarian workers. UNHCR was often the unfortunate witness to atrocities and was committed to cooperating so far as possible with any future court in sharing information which might help to bring the perpetrators to justice, while at the same time it had a responsibility to protect its staff and safeguard its operations. For that reason, it was important that the Court should provide adequately for witness protection, and the non-disclosure and inviolability of United Nations records.

75. **Mr. OUEDRAOGO** (Observer for the Interafrican Union for Human Rights) said that the Union joined with its partners in the World Coalition for the International Criminal Court in supporting the establishment of an independent, impartial, strong and universal criminal court. The Court's independence was crucial. Its staff must be above suspicion and the Prosecutor must not be subject to any outside influence. The Court must receive sufficient, constant funding, free from any pressures. The Court should be able to intervene unrestrictedly and its jurisdiction should extend to any place at any time. Following the example of the negotiations on banning anti-personnel mines, when neither the Security Council nor the United Nations Commission on Disarmament had been directly involved, the process to establish the International Criminal Court should also be free of any such involvement. The momentum created by African regional meetings held in connection with the establishment of an international criminal court and at the Summit of Heads of State and Government of OAU should help to ensure the establishment of an independent, permanent, universal and accessible court. The Interafrican Union for Human Rights, together with its partners, had organized an international coalition for a criminal court, and a forum had been established by several international human rights NGOs to call for such a court. The Court should fill the gap in national and regional jurisdictions, and its actions should be facilitated and accepted by States. It should be strong but just, impartial and accessible, should have sufficient resources, eradicate impunity, render justice, create scope for freedom and forge trust between citizens and governments for the real development of States.

76. **Ms. RISHMAWI** (Observer for the International Commission of Jurists—ICJ) said that the Court should have jurisdiction over the three core crimes of genocide, war crimes and crimes against humanity. Although the ICJ did not take a position on the crime of aggression, it believed that a mechanism should be established to extend the jurisdiction of the Court, either through an additional protocol to the Statute or through other conventions. While the crimes should be precisely defined, the definitions should be broad enough to apply in situations of both international and internal armed conflict. The thresholds in such crimes should be minimal, and where no thresholds currently existed in law, as was the case for war crimes, no threshold should be added. The Court should have automatic jurisdiction. While the role of national courts was essential in combating impunity, experience showed that national legal systems often protected the perpetrators of such crimes. The addition of lengthy and complex admissibility procedures should therefore be avoided. There must be an independent, full-time prosecutorial organ to bring charges against accused persons and to collect, prepare and present evidence; it should have the power, subject to sufficient checks, to initiate complaints. The Court must be free from political interference. While the Security Council should be able to refer matters to the Court, it should not be able to interfere in the Court's jurisdiction or to protect certain individuals from prosecution. The Court should be a universal body associated with the United Nations and funded from its regular budget. No reservations to the provisions of the Statute should be admissible, nor should the crimes covered by the Court be subject to a statute of limitation. With a view to the speedy establishment of the Court, the Statute should not require a high number of ratifications. In all aspects of the Court's work, whether substantive, procedural or administrative, gender concerns should be taken into account.

77. **Ms. McKAY** (Observer for the Victims Rights Working Group) said that the establishment of an international criminal court was an important symbol for survivors of heinous crimes, but there would be no justice without justice for victims; the International Criminal Court must therefore be empowered to address their rights and needs. There was increasing recognition of the need to take account of victims' rights, both through the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and at the national level, including opportunities for them to obtain various forms of reparation without having to initiate separate legal proceedings.

78. The Court must be able to guarantee protection for victims and other witnesses in the proceedings. That would require a strong and effective victims' and witnesses' unit. There must be appropriate structures for dealing with women victims, and personnel with gender expertise to ensure their proper respect and treatment. Recognition of crimes against women was itself a crucial aspect of justice and the healing process. Child victims also required specialized treatment and mechanisms. Adequate provision must further be made for the effective participation of victims in the proceedings. The Court must be able to ensure the right of victims and their families to reparation, as defined in the draft United Nations basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law. It would be the Court's ability to bring to justice those responsible for the crimes within its jurisdiction that would do most to satisfy the expectations of victims.

The meeting rose at 6.20 p.m.